

## **March 13, 2014 Minutes**

### **South Dakota Board of Medical & Osteopathic Examiners – Public Board Meeting**

Board Members Present: Kevin Bjordahl, MD; Walter Carlson, MD; Mary Carpenter, MD; David Erickson, MD; Laurie Landeen, MD; Jeffrey Murray, MD

Board Member Absent: Ms. Deb Bowman; Mr. Bernie Christenson; Brent Lindbloom, DO

Board Staff Present: Margaret Hansen, PA-C; Ms. Randi Sterling; Ms. Jane Phalen

Counsel Present: Diane Best, Hearing Examiner  
Roxanne Giedd, Board counsel  
William Golden, Staff counsel

Dr. Mary Carpenter, President of the Board, called the public meeting to order at 9:00 am. Roll was called, a quorum was established.

A motion to approve the minutes from the November 13, 2013, meeting was ratified by the Board (Erickson/unanimous).

A motion to approve the minutes from the January 23, 2014, meeting was ratified by the Board (Erickson/unanimous).

Reports for the Advisory committees were given. Board staff member Mr. Tyler Klatt has been organizing and meeting with the eight different advisory committees to the Board. The athletic trainer advisory committee had their initial 2014 meeting, and the occupational therapy advisory committee had their second 2014 meeting. All advisory committees to the Board are working to draft administrative rules for the Board's consideration.

Advisory Committee members Tom Cahill, RCP; Helen Nichols, LN; and Louise Papka, PA-C, were in attendance. A motion to approve the nomination of Kim Herrmann, PA, to the physician assistant advisory committee was ratified by the Board (Erickson/unanimous).

A motion to approve the Asthma Educator Institute's program sponsored by the American Lung Association for respiratory therapists as acceptable to fulfill the annual continuing education renewal requirements was ratified by the Board (Erickson/unanimous).

A motion to approve the new licenses, permits, registrations and certificates issued since the November 13<sup>th</sup> Board meeting was ratified by the Board (Erickson/unanimous).

Discussion was held regarding the financial report and a motion to approve the report was ratified by the Board (Erickson/unanimous).

**Public Hearings: Board members assigned to a case do not deliberate or vote in that case (ARSD 27:78:05:05).**

A motion to approve the removal of restrictions from the occupational therapist license for Cynthia Hettinger was ratified by the Board (Bjordahl/unanimous).

A motion to approve the removal of restrictions from the physician assistant license for Timothy Larson was ratified by the Board (Erickson/unanimous).

A motion to accept the voluntary surrender of respiratory therapist license for Rebecca Backous was ratified by the Board (Erickson/unanimous).

A motion to approve the consent agreement with suspension of the EMT/Paramedic license for Justin Wilcox was ratified by the Board (Erickson/unanimous). The assigned Board member, Dr. Bjordahl, did not participate in the deliberation or vote.

A motion to approve the stipulation and agreement of the physical therapist assistant certification for Melissa Adolph was ratified by the Board (Bjordahl/unanimous). The assigned Board member, Dr. Carpenter, did not participate in the deliberation or vote.

A motion to approve the Consent Agreement with Reprimand of the EMT/Paramedic license for Sean Lien was ratified by the Board (Erickson/unanimous). The assigned Board member, Dr. Carlson, did not participate in the deliberation or vote.

**Physician Hearing: Board members assigned to a case do not deliberate or vote in that case (ARSD 27:78:05:05).**

The physician did not waive privilege so the Board entered a closed session pursuant to SDCL 36-4-31.5 *Evidence in cancellation, revocation, suspension, or limitation proceedings confidential. Testimony of a witness or documentary evidence of any kind on cancellation, revocation, suspension, or limitation proceedings are not subject to discovery or disclosure under chapter 15-6 or any other provision of law, and are not admissible as evidence in any action of any kind in any court or arbitration forum, except as hereinafter provided. No person in attendance at any hearing of the Board of Examiners considering cancellation, revocation, suspension, or limitation of a license, resident license, or certificate issued by it may be required to testify as to what transpired at such meeting. The prohibition relating to discovery of evidence does not apply to deny a physician access to or use of information upon which a decision regarding the physician's staff privileges was based. The prohibition relating to discovery of evidence does not apply to any person or the person's counsel in the defense of an action against the person's access to the materials covered under this section. Source: SL 1985, ch 297, § 21; SL 2009, ch 178, § 13; SL 2013, ch 172, § 14.*

**ARSD 20:78:04:06. Effect of failure to renew during investigation.** *The holder of a license, permit, or certificate may choose not to renew the license, permit, or certificate after a complaint investigation has been initiated by the executive secretary. A failure to renew after investigation has been initiated shall be reported as "withdrawn under investigation" in the*

*board's permanent license files and in any national databases to which the board is required to report licensure action.*

A motion to approve the Withdrawal of Medical License while Under Investigation regarding Wendell C. Danforth, MD, was ratified by the Board (Erickson/unanimous)

A motion to approve the Petition for Revocation of South Dakota Medical License of Dennis R. Wicks, MD, was ratified by the Board (Erickson/unanimous) The assigned Board member, Dr. Carlson, did not participate in the deliberation or vote. The staff counsel was directed to prepare Findings of Fact and Conclusions of Law for Dr. Carpenter's signature.

A motion to approve the Findings of Fact and Conclusions of Law and Final Decision to decline to grant a medical license to Ryan D. Lee, DO, was ratified by the Board (Erickson/unanimous). Dr. Landeen abstained from the discussion and vote.

A motion to enter executive session (SDCL 1-25-2[1]) was ratified by a vote of the Board (Erickson/unanimous).

### **The Board's public meeting resumed.**

The Board met with Maria Eining, Dr. Dan Heinemann, and Dr. Tad Jacobs on behalf of the South Dakota Health Professionals Assistance Program (HPAP). A business plan and budget was presented to the Board for discussion. The Board supports HPAP and needs more information. Staff was directed to meet over the next year with other participating entities, Boards, and all interested parties to work together on the plan and budget.

Discussion was held regarding a Community Paramedicine Program. Staff was directed to gather more information to determine whether legal authority for such a program exists in South Dakota law, and to invite comments and participation from all interested parties in South Dakota.

Discussion was held regarding the State of South Dakota Data Collection System. It was discussed that Board does not have all the information that is being requested, does not have the statutory authority to compel licensees to provide certain types of information, and has no current feasible method in place to collect some of the information being requested. Concerns about confidentiality were also discussed. The staff was directed to respond with any data that was available to this state agency.

Discussion was held about a complaint regarding Back to Basics Nutrition. The staff was directed to contact this entity with a notice to cease and desist.

Discussion was held regarding malpractice and review of the cases by Board members. Staff will split the cases evenly among the physician board members so they can review any available information to make recommendations at a future board meeting.

The Board reviewed drafts for proposed administrative rules based upon the Federation of State Medical Board's 2013 Update to Model Policies on Opioids and the Treatment of Pain, specifically the model policy for use of opioid analgesics in the treatment of chronic pain, and the model policy on DATA 2000 and treatment of opioid addiction in the medical office. The Board directed counsel and staff to include specifics in the drafts for review at the next Board meeting.

The executive director provided the following information: 1) a Board investigator has been hired and will start shortly; 2) a letter with the Board's input regarding the FSMB Interstate License Compact was sent to the FSMB and the staff is waiting for a response or update; 3) the Board's response about the Interstate License Compact was provided to Senator John Thune's office; 4) the FSMB Annual Meeting is April 24 to 26, and any Board member wishing to attend may contact the executive director for assistance in registering.

The next Board meeting is Thursday, June 12, 2014.

There being no further business the meeting was adjourned.